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**Sent:** Fri 1/18/2013 2:09:04 PM

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## WATER LAW NEWS JANUARY 18, 2013

### HIGHLIGHTS

#### EPA to Re-Examine Air Standards for Fracking Operations

EPA says it will reconsider aspects of air pollution standards for natural gas hydraulic fracturing operations and lays out a schedule for further rulemaking in a court filing. EPA asks the U.S. Court of Appeals for the District of Columbia Circuit to put the legal challenges to the standards on hold, saying it will issue a series of proposed and final rules over roughly the next two years addressing issues under reconsideration. EPA did not provide details on what those rules would entail. ... [More »](#)

#### Mayors Press EPA for Greater Flexibility in Clean Water Act Compliance

U.S. mayors demand that EPA give cities and towns greater flexibility to comply with costly Clean Water Act regulations. In a closed-door meeting with top officials—Deputy EPA Administrator Perciasepe, Acting Assistant Administrator for Water Nancy Stoner, and Assistant Administrator for Enforcement and Compliance Assurance Cynthia Giles—the mayors let the agency know that a "one-size-fits-all approach" for determining ability to pay is unrealistic. The talks come at the U.S. Conference of Mayors' annual meeting. ... [More »](#)

#### Inspector General to Audit EPA List of Alleged Violations Not Addressed

The EPA inspector general will evaluate the agency's public list of alleged violations of environmental laws that have gone unaddressed, according to a memorandum to the Office of Enforcement and Compliance Assurance. The evaluation will seek to determine how EPA uses the Watch List as an enforcement tool and "whether there are opportunities for improvement," the inspector general says in the memorandum. ... [More »](#)

#### DHS Pledges 'Heightened Pace' of Chemical Security Plan Approvals

A Department of Homeland Security official says DHS has approved 22 site security plans for chemical facilities regulated under the Chemical Facility Anti-Terrorism Standards program and pledges a "significantly heightened pace" of inspections and approvals in 2013. David Wulf, deputy director of the office that oversees the program, also says DHS has completed 87 of the 95 action items identified in an internal reform plan for the CFATS program, which has been hit with allegations of mismanagement. ... [More »](#)

#### EPA: Technology Access Should Be Considered in Drinking Water Reporting

In planning a program to send annual water quality reports to customers, water utilities should research the technology capabilities of their clients, Adrienne Harris, an environmental scientist with EPA's Office of Ground Water and Surface Water, tells a webinar. The webinar is held to explain new provisions of the consumer confidence report rule that now allow the reports to be sent electronically. Until now, paper reports have been mailed to customers annually. ... [More »](#)

### ALSO IN THE NEWS

WATER POLLUTION: Virginia sued over power plant discharge permit A-17

WATER RESOURCES: Federal Claims Court dismisses California water district's claims against Interior A-15

### NOTICE

#### HOLIDAY SCHEDULE:

This report will not be published on Martin Luther King Day, Monday, Jan. 21.

### EPA Plans Talks With Cities On Water Costs But Resists Call For Overhaul

EPA is slated to launch talks with mayors and other municipal entities over how it determines whether cities can afford infrastructure upgrades needed to comply with combined sewer overflows (CSOs) requirements, but the agency appears to have rejected calls from municipal officials to overhaul its 1997 policy for making the determinations.

### Environmentalists Urge Administration To Expand Keystone's GHG Review

Environmentalists are urging the Obama administration to expand the scope of the greenhouse gas (GHG) impacts it is reviewing for a decision on whether to permit the Keystone XL tar sands pipeline, saying GHGs from petroleum coke should be included as they would significantly boost the project's GHGs and justify denying the permit.

### Under GOP Pressure, CRS Said To Weigh Changes To Coal Ash Report

The Congressional Research Service (CRS) has told lawmakers supporting a bill that would give states, not EPA, primacy over coal ash disposal that it will update its recent report that raised questions about the feasibility and level of protection provided by the legislation after congressional Republicans pressured the service to make changes.

### EPA IG Eyes Host Of Key Program Reviews In Plan For 2013 Evaluations

EPA's Inspector General (IG) is planning to launch a host of evaluations into key agency programs as part of its 2013 agenda, which broadly aims to help EPA address management challenges including a lack of workforce planning, limited cybersecurity defenses and inconsistent oversight of delegation of federal programs to states.

### Latest Blogs

#### GOP Faults Delayed EPA Fracking Study

Republican senators are criticizing EPA for again delaying its draft study linking groundwater contamination in Wyoming to hydraulic fracturing fluids, saying the agency's decision to . . .

### CLIMATE:

New reports show Keystone XL a likely driver of future warming

Jean Chemnick, E&E reporter

Published: Thursday, January 17, 2013

International environmental groups today released two reports detailing the likely climate costs of the proposed Keystone XL oil pipeline in a last-minute attempt to persuade the Obama administration not to approve it.

Their pitch: Building the proposed pipeline to carry 830,000 barrels of Canadian oil sands oil a day to U.S. refineries will ensure the expansion of some of the highest-carbon fuels now in use while delaying a switch to more climate-friendly alternatives.

"This pipeline is not about a pipeline," Danielle Droitsch, Canada Project director for the Natural Resources Defense Council, said at an unveiling of the reports today at the National Press Club in Washington, D.C. "This is about tar sands development. This is about climate."

A paper released by Oil Change International, an anti-fossil-fuels activist group based in Washington, found that the State Department in its assessment of the proposed pipeline had not considered carbon emissions from U.S. refineries burning petroleum coke from oil sands. The agency had thereby underestimated the greenhouse gas effects of the fuel that would be transported through the pipeline by about 13 percent, the study concludes.

The Canada-based Pembina Institute's report looked at the effect the pipeline would have on the expansion of oil sands development in Canada. The industry already produces 1.8 million barrels a day but is set to produce upward of 5 million a day by 2030, Nathan Lemphers of Pembina told reporters at today's event.

The reports were touted by advocates and lawmakers who hope President Obama will reject a revised proposal for Keystone XL in the next few months. Rep. Henry Waxman (D-Calif.) said in a statement that the reports showed Keystone "is the key that will unlock the tar sands."

"If the pipeline is approved, the world will face millions more tons of carbon pollution each year for decades to come," said Waxman, who serves as top Democrat on the House Energy and Commerce Committee. "After Hurricane Sandy, devastating drought, unprecedented wildfires, and the warmest year on record in the United States, we know that climate change is happening now, we have to fight it now, and we must say no to this pollution pipeline now."

Droitsch said the pipeline decision has become a "primary focus" of environmental and climate change activists.

"The pressure is being felt by the president," she said.

Droitsch noted that the Obama administration had committed to consider all the environmental effects of building the pipeline, and said she therefore expects that the supplemental environmental impact statement being prepared by the State Department will

take into account the effects not only of transporting the fuel, but of encouraging its production.

"We don't view this as an inevitable approval," she said, adding that whatever the president decides on Keystone XL, it will go down as part of his legacy on climate change.

Speakers agreed that if the pipeline goes forward, it will serve as a powerful market signal encouraging the oil sands industry to expand. That, in turn, would make it very difficult for the world to keep its postindustrial temperature rise to under 2 degrees Celsius, the threshold at which scientists say the worst effects of climate change can still be avoided.

This is especially true, they said, given the current political situation in Canada, where the Conservative government is allied with the oil sands industry and has taken steps to dismantle environmental rules it views as onerous.

"Because Canada does not have a credible plan for responsibly developing the oil sands, including reducing emissions so Canada can meet its climate commitments, the pipeline should not go ahead," said Lemphers. He touted the need for Canada to promulgate a new greenhouse gas rule for oil and gas production, or to price carbon emissions more broadly.

#### CALIFORNIA:

Groups push for smaller, less expensive delta project

Published: Thursday, January 17, 2013

A smaller version of a new water export system for California's Sacramento-San Joaquin River Delta would be less costly and more reliable than other plans on the table, a group of conservation organizations and Bay Area water agencies said.

The group proposes building a single intake and tunnel on the Sacramento River that could carry 3,000 cubic feet of water per second. Additionally, programs such as conservation, recycling and new water-storage development could be used to increase the amount of water in the delta.

The \$14 billion to \$16 billion proposal would also improve delta levees and restore 40,000 acres of delta habitat, the group said.

The group includes the Natural Resources Defense Council, the Bay Institute, Defenders of Wildlife, the Planning and Conservation League, the Contra Costa Council and Environmental Entrepreneurs.

It is a much smaller proposal than the one supported by Gov. Jerry Brown's (D) administration. His office, as well as federal officials, supports a plan that would build three large facilities to divert 9,000 cubic feet of water a second into two underground tunnels that would feed into existing pipes. The project's estimated cost would be \$18 billion.

While none of the ideas proposed by the coalition are new, backers say a formal package would give officials a better idea of the plan's economic advantage.

"All we've done is to compare the incremental benefits of a larger facility with a larger investment in local resources like recycling efficiency," NRDC's Barry Nelson said (Bettina Boxall, Los Angeles Times, Jan. 16). -- JE

#### OIL AND GAS:

Citgo to settle out of N.H. water pollution case

Published: Thursday, January 17, 2013

Citgo Petroleum Corp. will no longer be a part of an \$816 million trial as it looks to settle with the state of New Hampshire, according to a court filing from this week.

"The parties stipulate that Citgo Petroleum shall be severed from the above captioned case until such time as a consent agreement between Citgo and the state is filed with the court," stated a court filing dated Jan. 15.

The case about the pollution of the state's wells with the chemical methyl tertiary-butyl ether, or MTBE, began Monday. The state says oil companies knew of the potential for groundwater contamination when they decided to use the gasoline additive.

New Hampshire filed suit in 2003 against Citgo, Exxon Mobil Corp., Shell Oil Co., Sunoco Inc., ConocoPhillips Co., Irving Oil Ltd., Vitol SA and Hess Corp. Since then, all the companies except Citgo, Exxon Mobil and Irving have settled out of court.

Under the agreement, Citgo and New Hampshire have until Feb. 15 to reach an agreement. Otherwise, Citgo will be reinstated to the case. Sources say the company and state have already reached a deal (Earle/Jeffrey, Bloomberg/Fuel Fix, Jan. 16). -- JE

#### GULF SPILL:

Prosecutors, BP ask judge to approve \$4B plea deal

Published: Thursday, January 17, 2013

Federal prosecutors and a unit of BP PLC have asked a federal judge for approval of a \$4 billion guilty plea agreement for the 2010 Deepwater Horizon disaster.

In November 2012, Houston-based BP Exploration & Production Inc. agreed to plead guilty to 14 counts and pay \$4 billion to resolve all criminal charges. The plea included 11 counts of felony seaman's manslaughter.

"The plea agreement imposes severe corporate punishment, appropriately reflects the criminal history of other companies with the BP group of companies, the serious nature of the instant offenses, and the impact of the Macondo blowout and spill on the Gulf Coast and our nation as a whole; and deters BP and other deepwater drillers from permitting such a catastrophe to occur in the future," said Lanny Breuer, assistant attorney general for the Criminal Division of the Justice Department, said in a federal court filing.

But the plea deal has drawn opposition from those who were injured and the relatives of the men who were killed in the rig explosion and spill. More than a dozen letters have been sent to U.S. District Judge Sarah Vance, asking her to reject the

agreement. Most of the letters ask for a "sincere" apology and punishment that would be as severe as their losses. "We have been compensated, but no amount of money will bring my father back," wrote Ashley Manuel, daughter of rig worker Keith Blair Manuel. "If I had my wish, it would be that the three representatives who sat in my grandparents' living room and lied to my face about the accident would sit in jail and feel the same pain and loss I feel" (Brubaker/Feeley, Bloomberg, Jan. 17). -- JE

ClimateWire -- Fri., January 18, 2013 -- Read the full edition

1. FOSSIL FUELS: Whether by river or rail, coal exporters hit local opposition in the Northwest

RAINIER, Ore. -- The grainy photograph hanging on the wall of the Ol' Pastime Tavern here recalls a time when lumber still defined the economy of the Northwest. It was taken in 1924. The tavern -- at that time still a hotel and saloon -- is perched in the foreground, flanked by smaller clapboard buildings on either side. Railroad tracks run down the main street amid piles of logs waiting for the next train. Nine decades later, those tracks still cut through the heart of town, passing the Ol' Pastime and a dozen other Rainier businesses as they skirt the southern bank of the Columbia River. Soon, they could put Rainier squarely in the path of some 30 million annual tons of coal, mined from Montana and Wyoming and bound for the Pacific and Asia.

2. PEOPLE: Pershing to leave State Department for DOE

Deputy Special Envoy for Climate Change Jonathan Pershing, who helped lead the United States at the U.N. global warming talks for the past four years, will step down. In an email to colleagues last night, obtained by ClimateWire, Pershing announced he will be the Department of Energy's new deputy assistant secretary for climate.

#### TODAY'S STORIES

3. ECONOMICS: U.S. efficiency spending projected to double, offset most demand increases

4. SCIENCE: Warming Arctic could spell doom for a community of species -- study

5. GRID: Calif. reaches out to neighbors in push for green power

6. TRANSPORTATION: Cities spearhead plan for sustainable new growth models

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11. NATIONS: Big bucks needed for clean energy, says French president

12. STATES: Minn. legislators get a crash course in climate

EnergyWire -- Fri., January 18, 2013 -- Read the full edition

1. LNG: DOE leadership question adds to unknowns on exports

A messaging war is heating up as stakeholder comments roll into the Energy Department around proposals to expand natural gas exports, but one concern with the process is not making it into writing: How will a potential leadership change at DOE affect the results?

#### THIS MORNING'S STORIES

2. HYDRAULIC FRACTURING: House Democrats push EPA to move faster on Pavillion

3. NEW JERSEY: Fracking moratorium expires

4. BUSINESS: Rosneft's rise to largest crude producer paced M&A action in 2012

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